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IN THE

Supreme Court of the United States

OCTOBER TERM—1952

No. 428

CONSUMER SALES CORPORATION, JULIUS J. BLUMENFELD and MYRON J. COLIN,

Petitioners,

against

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION

BERTRAM J. DEMBO,
Attorney for Petitioners,
220 Broadway,
New York, N. Y.

MURRAY M. SEGAL,
of Counsel.

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against
FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners present this petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit to review a final decree of that court confirming an order of the FEDERAL TRADE COMMISSION directed to the petitioners to cease and desist certain acts and practices in connection with the sale of merchandise and granting enforcement of said order.

The decision of the Court of Appeals was made on July 15, 1952 and is reported at 198 Fed. (2d) 404. The cease and desist order of the FEDERAL TRADE COMMISSION is set out at pages A24 to A26 of volume I of the record. The opinion of the Court of Appeals is set out at pages A42 to A49 of volume I of the record. The order entered thereon, which was filed on August 1, 1952, is set out at pages A50 to A52 of volume I of the record. A certified transcript of the record of the Court of Appeals is filed herewith.

Jurisdiction

The jurisdiction of this Court is based on Section 5 of the Federal Trade Commission Act, 52 Stat. 111 (U. S. C., Title 15, Sec. 45) and Section 240 (a) of the Judicial Code, as amended.

Summary Statement of Matter Involved

The proceedings culminating in the order of which the petitioners have sought and are seeking review were commenced by the filing of the complaint alleging unfair and deceptive acts and practices in commerce, to the prejudice of the public, consisting of false and misleading statements and representations in connection with the sale of household articles. The alleged statements and representations were primarily the oral utterings of the sales representatives associated with the petitioner corporation. The complaint charged that the petitioners made representations to the purchasing public among which were that the petitioner corporation had been authorized by various prominent soap manufacturers to make surveys as to the usage of soap products and, in order to obtain the cooperation of the public in furnishing this information and turning in box tops and labels from soap products, the petitioner corporation had been authorized to sell merchandise regularly selling for $100.00 or more at the price of $56.90 in monthly installments which were to be accompanied by the soap box tops or labels. It was further charged that a customer who has made her selection of articles wanted is given an envelope in which to enclose soap box tops or labels and is asked to sign a contract following which she is required to sign a promissory note before she has had an opportunity to examine her purchase. The complaint further alleged that the petitioner corporation had no authority to act for the various soap manufacturers, that the soap box tops or wrappers were not to be turned over to the Federal Government and that the merchandise sold

by the petitioners was not worth $100.00 or more per set but rather was sold at the customary price for such articles. Allegations pertaining to an alleged unauthorized use by the petitioners of the Good Housekeeping Magazine seal of approval were also made but were found by the Commission to be without supporting evidence. The Commission alleged that the statements and representations of the petitioners had a tendency and capacity to mislead and deceive and actually did mislead and deceive a substantial portion of the purchasing public, to the prejudice of the public.

The petitioners, in their answer filed on or about October 27, 1949, denied the principal allegations of the complaint. It was alleged that the individual petitioners, far from formulating and controlling the conduct of sales and the character of representations made by the corporation's sales representatives, merely directed the activities of the petitioner corporation in general. It was denied that the petitioner corporation maintained a course of trade in commerce between the states or that the alleged unfair and deceptive acts and practices were in commerce, but it was admitted that the corporation's products are transported from its place of business to other states. The answer denied familiarity with the alleged practice of soap companies of selling household articles of proven merit for a nominal price plus box tops or wrappers. It was admitted that the corporation's sales representatives formerly solicited box tops and labels of various sorts, but the making of misrepresentations in connection therewith was denied. It was denied that customers are asked to sign notes before they have had an opportunity to examine their purchases, and it was also denied that the purchasing public has been deceived or prejudiced. As a further defense, it was pleaded that the sales representatives whose alleged representations the Commission sought to impute to the petitioners were not employees but rather independent contractors subject only to general supervision; that much before the issuance of the complaint the sales representatives were requested not to represent or imply to the public

that the petitioner corporation was connected with any other company, soap company or otherwise, and that printed literature disclaiming any such connection was given to them for distribution to the public; and it was claimed that if any of the alleged misrepresentations were made, they were made without the knowledge and consent of the petitioners and contrary to their express requests and instructions. The individual petitioners pleaded separately that their activities were engaged in by them solely as officers and employees of the petitioner corporation, and they denied every allegation of the complaint as it pertained to them individually.

Hearings were held in New York and New Jersey by a Trial Examiner who, on June 20, 1950, filed a recommended decision with the Commission which thereupon, after the submission of exceptions and briefs and after oral argument, rendered its findings as to the facts and conclusion and made the order to cease and desist which is set out at pages A24 to A26 of volume I of the record. In its findings the Commission found the facts to be substantially as set forth in the complaint although it struck some of the allegations of the complaint as being without sufficient supporting evidence.

On August 31, 1951 the petitioners filed their petition to review and set aside the Commission's order with the Court of Appeals. The matter was heard by the court on briefs and argument of counsel. Thereafter, on July 15, 1952, the court rendered its decision dismissing the petition to review and granting enforcement of the cease and desist order.

Questions Presented

The petitioners consider that the following are the issues presented by this petition:

1. On the record herein was the Commission justified in finding that the petitioner corporation was responsible

for the acts of its sales representatives notwithstanding that the sales representatives were independent contractors?

2. Did the Commission's finding that the individual petitioners were responsible for the acts of the sales representatives of the petitioner corporation have any support in the record and in law?

3. On the conceded fact that the petitioner JULIUS J. BLUMENFELD had completely severed his connection with the petitioner corporation long before the order, was the Commission warranted nevertheless in including this petitioner in its order?

4. Was there any substantial evidence before the Commission that a substantial portion of the purchasing public was misled and deceived and induced to make purchases or does the record show that corrective action by the Commission was unnecessary, unwarranted and not in the public interest?

5. In the face of the many decisions (cited and discussed in the accompanying brief), did the Commission exceed its authority by couching its order in terms of undue broadness and indefiniteness and including matters not contained in the pleadings?

Reasons Relied on for Granting Writ

1. The court below erred in failing to set aside and vacate the cease and desist order as without substantial supporting evidence and as contrary to law.

2. The court erred in holding both the petitioner corporation and the individual petitioners (and particularly the petitioner JULIUS J. BLUMENFELD) responsible for the alleged misrepresentations of the sales representatives of the petitioner corporation notwithstanding the fact that the status of these sales representatives as independent contractors was not seriously disputed. In so deciding without

substantial proof of participation by the petitioners in the making of the false representations, the court below is in conflict with the policy enunciated by this Court in *Federal Trade Commission* v. *Standard Education Society,* 302 U. S. 112 (1937) and other cases in which direct participation in improper conduct has been required.

3. The court below erred in finding a public interest to be established by the meager testimony as to false representations, and in making such finding is in conflict with cases in other circuits (specifically referred to in the accompanying brief) and has so far departed from the accepted course of judicial proceedings as to call for the exercise of this Court's supervisory powers.

4. The court below erred in sanctioning the unduly broad and indefinite language of the cease and desist order and in so doing is in conflict with decisions of other circuits relating to comparable language.

POINT I

The Commission erred in finding the petitioner corporation responsible for the acts of its sales representatives, and its finding in this regard, the making of an order against the petitioner corporation based on such finding and the confirmation of such finding by the court below are not supported by evidence and are in fact contrary to the evidence and to law.

A. The evidence establishes that the sales representatives of the petitioner corporation were and are independent contractors.

In the course of its opinion, the court below remarked that "it is unnecessary to consider whether or not the salesmen's relation to the petitioners was that of independent contractors." (R2. A46). In view of the absence of any finding as to such relationship contrary to that urged by the petitioners, only brief mention will be made of the authorities on the basis of which it appears that such a

relationship did in fact exist between the petitioner corporation and its sales representatives.

Whether an independent contractor relationship exists has been said to depend upon the facts in each particular case and to be determinable on the basis of the rights and obligations assumed, as disclosed by actual practices as well as written contract.

Madison v. *Phillips*, 88 Fed. (2d) 515 (5th Cir. 1937);
Glenn v. *Standard Oil Co.*, 148 Fed. (2d) 51 (6th Cir. 1945).

It has been generally held that if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and method of accomplishing the result he is an independent contractor and not an employee.

Glenn v. *Standard Oil Co., supra;*
Vaughan v. *Warner*, 157 Fed. (2d) 26 (3rd Cir. 1946), at page 32;
Spirella Co., Inc. v. *McGowan*, 52 Fed. 302 (W. D. N. Y. 1943);
Williams v. *U. S.*, 126 Fed. (2d) 129, 132 (7th Cir. 1942);
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Ryan-Richards, Inc. v. *Whitesides*, 96 Fed. (2d) 826 (10th Cir. 1938).

Noteworthy, also, in this connection is the list of factors to be used in determining the relationship contained in Section 220 of the *Restatement of Agency*. Among these fac-

tors are the extent of control over details, the kind of occupation, the skill required, whether the employer supplies the instrumentalities, tools and place of work, the method of payment and whether the parties believe they are creating a master-servant relationship.

On the basis of the criteria referred to in the above cases and in the *Restatement,* the sales representatives of the petitioner corporation were and are independent contractors. The then president of the petitioner corporation gave uncontradicted testimony, corroborated by the testimony of one of the sales representatives, as to the written contract between the corporation and the representatives which was Respondent's Exhibit I (R1. A29, A30, A33, A47). He further testified to the absence of territorial or other restrictions and supervision and to the presence of the very factors which have been uniformly held to point toward an independent contractor relationship (R1. 30-33), contrasting this relationship with that obtaining between the petitioner corporation and its deliverymen (R1. A38, A39).

It is thus clear that the record would not support a finding of an employment relationship but only that of an independent contractor relationship.

B. The doctrine of respondeat superior does not apply to the relationship of contractor and contractee, and for that reason the misrepresentations allegedly made by the sales representatives may not be imputed to the petitioner corporation.

Since the opinion of the court below, unlike the decision of the Trial Examiner, does not seem to rest on the imputation to the petitioner corporation of the misrepresentations allegedly made by the sales representatives, this point also will be given only brief mention.

As stated at page 353 of *57 Corpus Juris Secundum:*

> The doctrine of respondeat superior does not apply where the relationship is that of contractee and independent contractor, and, although the rule is subject to numerous qualifications and exceptions, which

> are discussed *infra* at Secs. 585-598, the general rule is that a contractee is not liable for the torts or negligence of his contractor or of the contractor's servants, nor is he liable for the torts and negligence of subcontractors and their servants.

And at page 355:

> The doctrine of non-liability for the acts or omissions of an independent contractor or his servants is founded on the principle that one person should not be compelled to answer for the fault or neglect of another over whom he has no control, and that the employer has a right to rely on the presumption that the contractor will discharge his legal duties owing to his employees and third persons.

To the same effect, see:

Union Tank and Supply Co. v. *Kelley,* 167 Fed. (2d) 811, 815 (1948);
Person v. *Cauldwell-Wingate Co.,* 176 Fed. (2d) 237 (1949);
Hexamer v. *Webb,* 101 N. Y. 377 (1886);
French v. *Vix,* 143 N. Y. 90 (1894);
Moore v. *Wills,* 250 N. Y. 426 (1929).

Significantly, in the case of *Parke, Austin and Lipscombe, Inc.* v. *Federal Trade Commission,* 142 Fed. (2d) 437 (2nd Cir. 1944) to which the court below refers as making it unnecessary to consider the relationship in the present case, the salesmen who allegedly misrepresented the source of the books dealt in by the respondent corporation were employees of that corporation.

The aptness of the abovementioned authorities follows, it is submitted, from the fact that the conduct of which the petitioners stand accused is of a quasi-tortious or quasi-criminal character, and the consequences with which they are faced—a cease and desist order violation of which may be met with severe penalties—is consistent with such characterization of the charges. No contractual rights or rights to a rescission are being asserted on the ground that mis-

representations were made which were within the apparent if not the actual authority of the sales representatives to make. If such were the claims, the applicable rules of law might well be different. Rather, the situation is that of a principal who engages an independent contractor to perform certain lawful functions and who is then accused of wrongdoing because the contractor negligently or deliberately inflicts damage on others. Thus, the analogy between the present case and cases of tortious or criminal conduct is a proper one.

It appears, therefore, that the decision of the court below can derive no support from any imputation to the petitioners of the assertions and statements of the sales representatives.

C. The record contains no substantial evidence to support the Commission's finding that the petitioner corporation encouraged, permitted and participated in the making of false representations.

The Commission has boldly asserted and the lower court has repeated that the petitioners "actively encouraged and participated in making" the false representations. It would seem that in this connection the Commission relied to a large extent on its additional claim that the petitioners "participated in and received the fruits resulting from such false representations and are responsible for them" (R1. A22). Exactly what legal doctrine the Commission seeks to invoke by its juxtaposition of the receipt of "the fruits" with the finding of participation is not clear, but what is clear is the total absence of evidence to support such claim of participation. In fact, the record discloses that the petitioners lacked knowledge of the very misrepresentations in which they are alleged to have participated.

Under Point II the facts as to the participation and complicity of the individual petitioners in the alleged misrepresentation are discussed in connection with the impropriety of the inclusion of the individuals in the order. Inasmuch as no greater complicity and participation is attributed to

the corporation than is charged to the individual petitioners, and to avoid unnecessary repetition, the Court is at this point respectfully referred to the argument under Point II and to the portions of the record there referred to.

POINT II

The Commission erred in finding the individual petitioners responsible for the acts of the sales representatives of the petitioner corporation, and its finding in this regard, the making of an order against the individual petitioners and the confirmation of such finding by the court below are not supported by evidence but are in fact contrary to the evidence and to law.

It has already been seen that under the facts in this case an order against the corporation is unsupportable and contrary to law because of the legal relationship between the corporation and its sales representatives unless based on the complicity of the corporation in the alleged wrongdoing. The following questions remain to be answered: (1) Whether an order against the individuals is supportable because the relationship between them *qua* individuals and the sales representatives permits the imputation of the acts of the latter to the former; (2) whether the individual petitioners may be deemed responsible for the acts and practices of the sales representatives, assuming the corporation to be responsible on some legal theory; and (3) whether the record contains any evidence to support a finding that they rendered themselves, and by the same token the corporation, so responsible by virtue of their own complicity in the alleged acts and practices.

The Commission made no effort to distinguish between the acts and responsibilities of the petitioner corporation and those of the individual petitioners. It chose to ignore the corporate entity. However, it also made no effort to establish the existence of any legal relationship between the individual petitioners and the sales representatives. The

fact is that there was none. On direct examination, the petitioner Blumenfeld testified:

> Q. Mr. Blumenfeld, have you ever engaged individually, or in your own name, in the business done by Consumer Sales Corporation? A. No, I have not.
> Q. Have all the acts done by you in connection with the operation of this business been done by you individually, or as an officer of the Corporation? A. As an officer of the corporation. (R1. A38)

Mr. Colin testified to similar effect upon being asked substantially the same questions. (R1. A45)

The Circuit Court of Appeals for the Second Circuit said in *Federal Trade Commission* v. *Standard Education Society,* 86 Fed. (2d) 692 (1936), mod. 302 U. S. 112 (1937), in striking an order insofar as it ran against two officers of a corporation which employed agents who were found to have made misrepresentations:

> On the other hand the agents were not agents of Stanford and Ward, who are therefore responsible only for what can be traced to them personally. (P. 697)

This Court reinstated the order because in that case it found direct participation by the individuals and an attempt to evade an imminent order. But the point made by the Circuit Court remains a valid one and, translated into terms of the present case, means that the misrepresentations of the sales representatives may with even less logic be imputed to the individual petitioners than to the corporation.

Assuming, *arguendo,* that there is basis in law for finding the petitioner corporation responsible for the misrepresentations of the sales representatives, it remains that without proof of their personal complicity the individual petitioners are not chargeable with personal liability. As stated at page 269 of *19 Corpus Juris Secundum:*

> Ordinarily a director or officer of a corporation is not responsible individually for corporate acts. The

> rule which exonerates an agent for responsibility for acts done in behalf of his principal . . . operates in favor of the directors of corporations.

and at page 282:

> The mere fact that one is an officer or director of the corporation does not per se render him liable for the fraud of the corporation or of other officers or directors. He is liable only for his own acts and omissions. He is not liable if he has not participated therein nor, with knowledge of the fraud, consented thereto.

This same principle has been expressed by the Circuit Court of Appeals for the Second Circuit in a Federal Trade Commission litigation.

> *Phelps Dodge* v. *Federal Trade Commission,* 139 Fed. (2d) 393 (1943), at page 397.

It is the settled law of the State of New York, as it must be of other jurisdictions, that a corporate officer is not chargeable personally with a crime or a tort committed without his active participation, authorization or knowledge.

> *Santa Barbara* v. *Avallone & Miele, Inc.,* 270 N. Y. 1 (1936);
> *People* v. *Brainard,* 192 App. Div. 816 (1920).

The Commission's awareness of the necessity that the record show the direct participation of the individual petitioners (and the corporation as well) in order that the order against them be supportable is evidenced by its subtle shift from the Trial Examiner's reliance on imputation to the Commission's ultimate finding of participation. Moreover, the cases which it has thus far relied on bear out the necessity for proving complicity. For example, in the leading case of *Federal Trade Commission* v. *Standard Education Society,* cited *supra,* the Commission's order ran against three individuals who held responsible execu-

tive positions in the offending corporation. The Circuit Court said at page 695 of its opinion:

> The doctrine applicable to patent infringements controls; it is not enough that an individual be a director or an officer of the infringing corporation; he must be shown to have had such connection with the wrong as would have made him an accomplice were it a crime, or a joint tortfeasor, were the corporation an individual.

In the particular case, the Circuit Court found that the order properly ran against two of the individual respondents because one had personally conducted a correspondence which was deemed objectionable and the other was familar with certain misleading advertising and sales policies. However, as to one of the prohibitions, the court found that "the evidence of the practice is very meager and in our judgment scarcely justified a finding that either of these men personally directed the statements about the cost of the course. Therefore Stanford should not be included in the tenth clause, nor Ward in the . . . tenth."

This Court, in reinstating the original order, was careful to emphasize the direct participation of the corporations and their officers. Thus, at page 117, the Court stated:

> That representations were made justifying this belief; *that the plan was outlined in letters going directly from the companies;* that men and women were deceived by them—there can be little doubt. (Italics added.)

An even more persuasive factor in influencing the Supreme Court to reinstate the original order was the Commission's finding that the respondent corporation "was organized by the individual respondents for the purpose of evading any order that might be issued by the Federal Trade Commission against the respondent the Standard Education Society." It was primarily this fact of actual and potential evasion (of which there is not a shred of evidence in the present case) rather than any theory that the

officers individually were bound by the misconduct of the corporation and its agents that caused the Commission to make its order against the individuals and the Supreme Court to sustain the Commission. The Supreme Court said at page 119:

> Since circumstances, disclosed by the Commission's findings and the testimony, are such that further efforts of these individual respondents to evade orders of the Commission might be anticipated, it was proper for the Commission to include them in its cease and desist order.

And again at page 120:

> Under the circumstances of this proceeding, the Commission was justified in reaching the conclusion that it was necessary to include respondents Stanford, Ward and Greener in each part of its order if it was to be fully effective in preventing the unfair competitive practices which the Commission had found to exist.

Similarly, other cases which uphold orders running against individuals who were officers of offending corporations contain special grounds. In *Sebrone Co.* v. *Federal Trade Commission*, the order required that the respondents cease and desist from disseminating false advertisements. This element of false advertising at once distinguishes the case from the present one. Moreover, in the *Sebrone* case, an answer had been filed in the name of all the respondents with identical defenses and without any attempt to differentiate between the responsibility of the various respondents. There had been no denial of responsibility for the acts charged and no denial of the use of the particular representation charged to be false. After setting forth these facts, the court said:

> In view of all these facts we find no error on the part of the Commission in directing its order against all the petitioners without requiring specific proof of participation by each in the acts charged.

135 Fed. (2d) 677 (7th Cir. 1943).

In a case in the Sixth Circuit, the complaint charged false advertising of two cosmetic preparations. It had been dismissed against the corporation because of its dissolution, and now the individual respondents sought the dismissal of the complaint. These individuals had already formed a new corporation which had succeeded to the name and assets of the dissolved corporation. The attempt to evade was obvious. The court said:

> The Commission was justified in concluding that it was necessary to enjoin the individuals in order to prevent the unfair competitive practices which it found to exist.
>
> *Gelb* v. *Federal Trade Commission*, 144 Fed. (2d) 580 (1944), at page 581.

Turning from the law to the record of the case at bar as it relates to the complicity of the individual petitioners and, by necessary implication, to the petitioner corporation (See Point IC, *supra*), it is noteworthy that, according to the estimate of the petitioner Blumenfeld, the corporation received complaints in less than "one-tenth of one per cent" of its transactions (R1. A29). On the subject of the specific misrepresentations alleged in the complaint, both individual petitioners testified that neither the corporation nor they had ever made them, authorized them to be made or suggested or recommended that they be made (R1. A36, A37, A40, A41). In fact, they denied knowledge such misrepresentations had been made except in one instance and in isolated cases (R1. A37, A41, A42).

Corroboration of the individual petitioners' lack of knowledge of any misrepresentations by the sales representatives was unwittingly provided by a witness for the Commission who was extremely hostile toward the petitioners. A Mrs. Catherine Herrschaft identified Mr. Blumenfeld as the person with whom she took up her complaint regarding the representations made to her in connection with the solicitation of box tops. Her testimony

placed the transaction many months prior to the issuance of the complaint. She recalled Mr. Blumenfeld's indignation at her story and that "he got very hot about it." She also remembered that he immediately confronted the sales representative and shortly thereafter had the merchandise picked up. Finally, she testified that Mr. Blumenfeld denied knowledge of the story that this sales representative had told about box tops while stating to her that they used box tops "for other purposes." (R1. A27, A28.)

The testimony of this witness for the Commission is entirely consistent with the testimony of both individual petitioners. The petitioners have never denied that they formerly solicited the return of box tops of various kinds (See Answer, R1. A13), although such solicitation was discontinued months before the complaint herein (See Point IV). In fact, the petitioner Blumenfeld testified in detail as to the manner in which and the reasons why box tops and wrappers were solicited. He explained how the corporation sought to preserve contact with customers and thereby promote repeat business even though after each sale customers dealt exclusively with the banks and even though the corporate name did not appear on any merchandise. The method used was to leave an envelope bearing the corporate name in "big letters" with each customer who made no objection and to give the customer a reason for holding the envelope until her account was fully paid by asking her to save box tops or wrappers of virtually any kind (R1. A33-A35). That this merchandising idea may have been perverted by a few errant sales representatives does not alter the fact that it was legitimately conceived and, for the most part, legitimately executed. Nor does this plan or the infrequent perversion thereof constitute substantial evidence of the complicity or participation of the petitioners in the alleged misrepresentations.

The ethical standards to which the petitioners sought to adhere are further evidenced by efforts which they made to eliminate the possibility of misrepresentations. These

efforts included verification of each sale and the terms thereof by the deliveryman, an employee of the petitioner corporation (R1. A38, A39), specific reference of each sales representative to the provisions of the agent's application (R1. A47) making each representative solely responsible for his own unauthorized acts (R1. A32) and personal investigation of each complaint (R1. A39). The Court's attention is referred to the sincere efforts by the petitioners to preclude all possibility of misrepresentation (R1. A40).

In connection with the factor of apparent intention to evade on which the courts have relied in sustaining orders against corporate officers, both individual petitioners were interrogated as to contemplated future operations. Both answered that they have never engaged individually in house-to-house selling and that they have no intention of doing so but rather have every intention of continuing with the petitioner corporation, in which substantial good will has been built up, regardless of the outcome of this matter (R1. A37, A38, A45, A46). The record contains no contrary suggestion and no evidence of an intention to evade an order which may be found or upheld as against the corporation. Thus, neither the *Standard Education* case nor the *Gelb* case supports the inclusion of the individual petitioners in the order. On the contrary, the reasoning of these cases points toward the impropriety of their inclusion in view of the facts of the case at bar.

Nor may any participation by the petitioners in the alleged misrepresentations be inferred from dissemination of false and misleading literature, as the sole claim of the Commission in this regard relates to the words "Special Offer" on the order forms (See Point V). This distinguishes two other cases on which counsel for the Commission relied in his brief submitted to the Commission.

Parke, Austin and Lipscombe, Inc. v. *Federal Trade Commission,* cited *supra;*
Perma Maid Company, Inc. v. *Federal Trade Commission,* 121 Fed. (2d) 282 (6th Cir. 1941).

For the foregoing reasons, it is submitted that the inclusion of the individual petitioners in the Commission's order was improper and without substantial basis in evidence.

POINT III

The Commission erred in its inclusion of the petitioner Julius J. Blumenfeld in its order, and such inclusion is supported neither by the Commission's findings nor by evidence and is contrary to such findings and to law and should have been stricken by the court below.

Shortly after the conclusion of the hearings before the Trial Examiner, the petitioner Blumenfeld sold his stock in the petitioner corporation and resigned as an officer and director. This fact was duly reported to the Commission, and Paragraphs One and Five of the Commission's findings as to the facts acknowledge the severance of this petitioner's connection with the petitioner corporation on March 21, 1950. Without any evidence as to the business into which this petitioner thereupon entered and is still engaged, the Commission blandly asserts in its findings that "there is no assurance that this respondent may not at some future time under some other trade name, engage in the same practices herein found to be alleged . . ." (R1. A22). Nor is there any evidence, the Commission might have added, that he will engage in the same practices, and the Commission has therefore failed to make a case against the petitioner.

When a corporation against which the Commission has directed an order is dissolved, it has been held that the order should be modified by striking the name of the corporation.

> *Galter* v. *Federal Trade Commission*, 186 Fed. (2d) 810 (7th Cir. 1951).

Also see

> *Gelb* v. *Federal Trade Commission*, cited *supra*.

When a person formerly trading as an individual causes a corporation to be formed of which he becomes the sole stockholder, it has been held that the individual should be dropped as a party.

Ostermoor & Co., Inc. v. *Federal Trade Commission,* 16 Fed. (2d) 962 (2nd Cir. 1927).

Similar reasoning would dictate the deletion of the name of the petitioner Blumenfeld from the order herein. Including him in the order is inconsistent with the finding of the Commission and can serve no useful purpose under the circumstances, and the court below should have ordered such deletion.

POINT IV

The Commission's finding that a substantial portion of the purchasing public was misled and deceived and induced to purchase substantial quantities of petitioners' merchandise is not supported by evidence but is in fact contrary to the evidence. The court below should have found that corrective action by the Commission is therefore unwarranted and not in the public interest.

One of the jurisdictional requirements of a proceeding under Section 5 of the Federal Trade Commission Act is that it be "to the interest of the public." As Justice Brandeis pointed out in *Federal Trade Commission* v. *Klesner,* "to justify filing a complaint the public interest must be specific and substantial."

280 U. S. 19, 27, 50 S. Ct. 1 (1929).

To the same effect, see *Arnold Stone Co., Inc.* v. *Federal Trade Commission,* 49 Fed. (2d) 1017 (5th Cir. 1931.)

The record before the Court shows that in approximately two and one-half years the petitioner corporation made

15,140 unit sales totalling $811,291.00 (R1. A28, A29). The Commission's case consisted of the testimony of fourteen housewives. During the aforementioned period the corporation has 621 sales representatives, the turnover being "tremendous." (R1. A29.) The Commission's case involved a handful of sales representatives. The record also shows a minute percentage of complaints (R1. A29), suggesting that this case falls within the *de minimus* rule.

In a case in which the record showed only a small number of customers to have been approached by the petitioner's salesmen with the representations under attack, it was held that the proceeding by the Commission was not in the public interest.

> *Flynn & Emrich Co.* v. *Federal Trade Commission,* 52 Fed. (2d) 836 (4th Cir. 1931).

The Circuit Court of Appeals for the Sixth Circuit commented in an espionage case:

> It is undoubtedly true that a single act may constitute substantial evidence of an unfair method of competition. *Fox Film Corp.* v. *Federal Trade Commission (C. C. A.),* 296 F. 353. But when all the facts are considered in this case, there is no act or combination of acts which in our opinion can be given that effect. Saving the testimony of Tower referred to, which was denied by Schueler, the evidence shows that petitioners, not only did not authorize their salesmen to disparage the products of their competitors, but expressly instructed them not to do so. Their policy, as disclosed in the evidence, was to sell their product on its merits, and not on the demerits of other like products. Proof that a salesman here and there out of many—as many as 600 at one time—spoke disparagingly of the product of a competitor (not more than a dozen times in all) does not amount to substantial evidence of an unfair method of competition.
>
> *Philip Carey Manufacturing Co.* v. *Federal Trade Commission,* 29 Fed. (2d) 49 (1928).

Nor have the Commission and the court below given proper recognition, along with the lack of substantial evidence in a quantitative sense, to the discontinuance of the solicitation of box tops prior to the issuance of the complaint. The most recent transaction testified to by the Commission's witnesses antedated the complaint by several months, and most purchases took place much earlier. While it has been held that the mere discontinuance of acts found to be illegal does not bar a cease and desist order, the courts have nevertheless considered such discontinuance to be a factor:

> The propriety of the order to cease and desist, and the inclusion of a respondent therein, must depend on all the facts which would include the attitude of respondent towards the proceedings, the sincerity of its practices and the professions of desire to respect the law in the future and all other facts. Ordinarily the Commission should enter no order where none is necessary. This practice should include cases where the unfair practice has been discontinued.
>
> *Eugene Dietzgen Co.* v. *Federal Trade Commission,* 142 Fed. (2d) 321 (7th Cir. 1944), at page 330.

Similarly in *John C. Winston Co.* v. *Federal Trade Commission,* 3 Fed. (2d) 961 (3rd Cir. 1925), the court said:

> It will be enough to say that the evidence shows that the company itself had ceased and desisted from the practice before the Commission filed the complaint, and on this evidence the order of the Commission to cease and desist from doing what the company had already ceased and desisted from doing and what it offered to stipulate never to do again cannot be sustained.

Also see *Federal Trade Commission* v. *Civil Service Training Bureau, Inc.,* 79 Fed. (2d) 113 (6th Cir. 1935) in which the court said, at page 116:

> The Commission is not authorized to issue a cease and desist order as to practices long discontinued,

> and as to which there is no reason to apprehend renewal.

This proceeding would never have been begun had the Commission viewed the business world with any degree of realism. At page 964 of the *Ostermoor* case, cited *supra,* in which an order was annulled, the Circuit Court for the Second Circuit said:

> There is no basis for the finding that *substantial* numbers of purchasers had been misled and deceived by the grossly exaggerated pictorial representation. (Italics by the court)

And in the *Standard Education* case, cited *supra,* even though this Court later modified on its particular facts, the Circuit Court expressed a guide which the Commission would do well to follow:

> It is true that the Commission is not to sanction unfair trade practices merely because they are of long standing; its duty is to bring trade into harmony with fair dealing. *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U. S. 483, 493, 494, 42 Sup. Ct. 384, 385, 386, 66 L. Ed. 729. To the discharge of that duty it should not, however, bring a pedantic scrupulosity; too solicitous a censorship is worse than any evils it may correct and a community which sells for profit must not be ridden on so short a rein that it can only move at a walk.

The record does not contain substantial evidence supporting the finding embodied in Paragraph Seven of the Commission's Findings As To The Facts (R1. A22), and the order is therefore unwarranted, contrary to law and not in the public interest and should have been vacated.

POINT V

The order to cease and desist is improper and contrary to law and exceeds the power of the Federal Trade Commission in that it seeks to interdict conduct other than has been complained of, employs unduly broad and indefinite language and omits essential qualifications.

The argument has thus far been directed to the impropriety of any order and of the inclusion of these petitioners. Assuming, however, that an order is warranted on this record, the order made by the Commission is in various respects objectionable and contrary to law and should have been modified.

In the second paragraph of the order the Commission orders that the petitioners and their agents, "directly *or through any corporate or other device* . . . shall cease and desist . . ." (R1. A25) (Italics added). This kind of prohibitory language has been repeatedly condemned by the courts. The use of catch-all phrases of ambiguous meaning is improper in proceedings fraught with such serious possible consequences as the present ones.

Nor may the Commission, in the same paragraph, throw in the words "or other merchandise" when the complaint, the proof and the findings are restricted to the sale and distribution of "aluminum cookware, dinnerware and silverware." (R1. A4).

The order goes on to interdict in broad language conduct which has neither been complained of nor been found to exist. In its first prohibition the Commission directs the petitioners to cease representing

> (1) That the respondents or any of them are connected with or represent in any manner any soap manufacturer *or any other company or organization* unless such is the fact (Italics added).

Both the record and the complaint are devoid of reference to any claimed connection with companies or organizations other than soap manufacturers, and the findings as to the facts properly do not go beyond finding that the salesmen represented "that they were connected in some manner with one or more of the prominent soap manufacturing companies." (R1. A20). The reference in the order to "any other company or organization" is entirely without warrant and therefore is not saved by the concluding words "unless such is the fact."

In its third prohibition the Commission orders the petitioners not to represent

> (3) That the purchasers of the said merchandise are being given a reduced price for such merchandise *or any other valuable consideration* as a premium or reward for their collection of box tops, *cooperation in furnishing information or participation in any other similar project or activity.* (Italics added)

The italicized portions of this prohibition, and particularly the second italicized portion thereof, are typical of the omnibus language which the Commission has sometimes attempted but which the courts have zealously stricken as shown in the cases referred to below. Moreover, this language is also subject to the objection that it has no foundation in the complaint, proof or findings since no other consideration is said to have been offered and nothing but the collection of box tops is said to have been sought.

With regard to the fourth prohibition in which the Commission enjoins the petitioners from representing that "merchandise is being sold at a special price when the price at which it is sold is the usual and customary price . . ." (R1. A25), there is again no mention of the words "special price" in the complaint. While the order blanks used by the petitioner corporation contained the words "Special Offer", the representation which the Commission now seeks to forbid was not complained of and may not now properly be banned by the Commission.

Thus, it appears that the Commission has wandered far beyond the scope of the complaint notwithstanding that under our legal system adjudications are not permitted to be made except as to matters asserted in the pleadings. This Court has said that "the orders [of the Commission] should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public . . ." To those words, the Court of Appeals for the Second Circuit has added the admonition that the order must be read in the light of the complaint.

> *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212 (1933);
> *Federal Trade Commission* v. *Standard Brands, Inc.*, 189 Fed. (2d) 510 (1951).

In *Federal Trade Commission* v. *Gratz*, in which the complaint was based on alleged tie-in sales, this Court said at page 427:

> When proceeding under Sec. 5, it is essential, *first*, that having reason to believe a person, partnership or corporation has used an unfair method of competition in commerce, the Commission shall conclude a proceeding "in respect thereof" would be to the interest of the public; *next*, that it formulate and serve a complaint stating the charges "in that respect" and give opportunity to the accused to show why an order should not issue directing him to "cease and desist from the violation of the law so charged in said complaint." If after a hearing the Commission shall deem "the method of competition in question is prohibited by this Act," it shall issue an order requiring the accused "to cease and desist from using such method of competition."
>
> If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words there is no foundation for an order to desist—*the thing which may be prohibited is the method of competition specified in the complaint;* otherwise it is improvident and, when challenged, will be annulled by the court. (Italics added)
>
> 253 U. S. 421 (1920).

Similarly, in a boycott case, the Circuit Court of Appeals for the Ninth Circuit, after stating at page 732 that:

> Manifestly the order of the Commission, based upon such a charge of conspiracy and upon the findings and conclusions sustaining the charge, must be supported by evidence which is sufficient to warrant a finding and conclusion separately against each respondent. . . .

continued, after a reference to the *Gratz* case, by stating:

> It follows that the order of the Commission must follow the charge in the complaint and that the charge in the complaint must be supported by evidence.
>
> *Western Sugar Refining Co.* v. *Federal Trade Commission,* 275 Fed. 725 (1921).

In a case involving discrimination alleged to be in violation of the Clayton Act, the court said:

> The gist of this order is to require the petitioner to conduct its business generally at its peril, leaving the Commission or any person or litigant claiming injury to harass the petitioner by proceedings under the Act for a mistake in interpretation or application of the order. In a similar case in disposing of a sweeping and general order of the National Labor Relations Board, the Supreme Court said: "But the mere fact that a court has found that a defendant has committed an act in violation of a statute does not justify an injunction broadly to obey the statute and thus subject the defendant to contempt proceedings if he shall at any time in the future commit some new violation unlike and unrelated to that with which he was originally charged."
>
> *Morton Salt Co.* v. *Federal Trade Commission,* 7th Cir. 162 Fed. (2d) 949 (1947), at page 959.

Other omnibus language was attempted in the case of *Milk and Ice Cream Institute* v. *Federal Trade Commission* which involved a price maintenance conspiracy. At

page 483 the Circuit Court of Appeals for the Seventh Circuit described the objectionable part of the order and gave its reasons for striking it:

> We are of the view, however, that one provision contained in paragraph (7) of the order should be eliminated. By it petitioners are enjoined from "formulating or putting into operation any other practice or plan which has the purpose or effect of fixing or maintaining prices for metal milk or ice cream cans." The present plan has been tested and found unlawful and we see no reason why some other plan of which the Commission might complain should not be tested in the usual way rather than in a proceeding for violating the cease and desist order, as would be the case if this provision should remain in the order. In *Swift and Co.* v. *U. S.*, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518, the court eliminated from an injunction order a provision almost identical with the one under discussion. The court (196 U. S., at page 401, 25 S. Ct., page 281) said: "The general words of the injunction 'or by any other method or device * * *' should be stricken out. The defendants ought to be informed, as accurately as the case permits, what they are forbidden to do. Specific devices are mentioned in the bill, and they stand prohibited. The words quoted are a sweeping injunction to obey the law, and are open to the objection which we stated at the beginning, that it was our duty to avoid."
>
> We think this reasoning is applicable to the provision in question and that it should be eliminated.
>
> 152 Fed. (2d) 478 (1946).

In *Cream of Wheat Co.* v. *Federal Trade Commission*, the respondent was ordered to desist from doing certain things which had resulted in the charge of price-fixing and then was prohibited from

> (6) . . . utilizing any other equivalent cooperative means of accomplishing the maintenance of prices fixed by respondent.
>
> 14 Fed. (2d) 40 (8th Cir. 1926).

This language was attacked as being too indefinite, and the court agreed that qualifications should have been added "in order that there may be no misapprehension on the part of the petitioner as to what is intended by the Commission by the broad language used in this paragraph . . ." (Page 50).

Thus, it is apparent that the courts have consistently adhered to the view that because a party has violated a statute in one respect he may not for that reason be enjoined in sweeping terms from violating the statute in all respects. Assuming the Commission's order to be proper with respect to some alleged violations, it is not thereby entitled to go beyond the scope of its complaint and embellish its cease and desist order with all manner of additional prohibitions. Because it has done so in the case at bar, those portions of the order to which specific exception has been taken are improper and should have been stricken.

The second prohibition in the order is that the petitioners cease representing "that they are making or conducting a survey." (R1. A25.) To the extent that this prohibition goes beyond the complaint, proof and findings in relating to *any* survey rather than the survey which it is alleged the sales representatives claimed they were making, the foregoing authorities and reasoning apply and the order should be qualified. Moreover, the prohibition should be further qualified by the same words "unless such is the fact" as are used by the Commission in its first prohibition, as it is surely not the intention of the Commission to bar the petitioners from informing the public that they are making a survey if they are in fact doing so.

With respect to the fourth prohibition in the order as to "special price", the Court is referred to the testimony of the petitioner Myron J. Colin in which he described different methods of selling aluminumware and testified that the method employed by the petitioner corporation resulted in a lower price to the consumer than alternative methods. (R1. A42-A45.) To expect precision in the

terminology used by salesmen in conveying this price advantage to their customers is to expect a great deal, but to prohibit all "puffing" is to ignore the realities of competitive business. As was well stated in *Ostermoor & Co., Inc.* v. *Federal Trade Commission,* cited *supra,* at page 963:

> The time-honored custom of at least merely slight puffing, unlike the clear misrepresentation of the character of goods . . . has not come under a legal ban.

For the foregoing reasons and to the extent indicated, the Commission's order, even if supportable in part, requires modification.

POINT VI

The petition should be granted and the cease and desist order herein should be set aside, vacated and annulled or modified as indicated.

Respectfully submitted,

BERTRAM J. DEMBO,
Attorney for Petitioners.

MURRAY M. SEGAL,
of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 428

CONSUMER SALES CORPORATION, JULIUS J. BLUMENFELD AND MYRON J. COLIN,
Petitioners

v.

FEDERAL TRADE COMMISSION

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit (R. vol. II, 42) is reported in 198 F. 2d 404.

JURISDICTION

The judgment of the court of appeals was entered on August 1, 1952 (R. vol. II, 48) and the petition for a writ of certiorari was filed on October 30, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTIONS PRESENTED

1. Whether petitioners, having actively encouraged and facilitated sale of their goods by means of false representations, engaged in unfair and deceptive acts and practices, irrespective of whether the salesmen who made the false representations were technically petitioners' agents.

2. Whether the fact that the two individual petitioners directed the activities of the corporate petitioner, formulated its sales policies, and were its officers and sole stockholders, justified the Commission in entering its cease and desist order against the individual petitioners.

3. Whether the Commission exceeded the limits of an "allowable judgment" in determining the scope of the prohibitions adequate to prevent continuation or renewal of petitioners' unfair and deceptive acts and practices.[1]

---

[1] The petition also presents the question of whether the Commission's order was "in the public interest." In view of the nature of the false representations admittedly made and the volume of petitioners' business—sales of over $800,000 in a 2½ year period (R. vol. I, A28-A29)—the question raised seems so palpably without merit that it will not be given further notice.

STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 717, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U.S.C. 45, provides in part as follows:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.
>
> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

STATEMENT

The Federal Trade Commission, after holding hearings on a complaint charging petitioners with the use of unfair and deceptive acts and practices in interstate commerce in violation of Section 5 of the Federal Trade Commission Act, made findings of fact, concluded that certain of petitioners' practices constitute a violation of Section 5, and issued a cease and desist order. On a petition for review of this order, the Court of Appeals for the Second Circuit unanimously upheld the validity of the order. (R. vol. II, A 42-48.) The material facts found by the Commission, and largely restated in the opinion of the court of appeals, are as follows:

The corporate petitioner is engaged in the sale of aluminum cookware, dinnerware, silver plate and glassware through the medium of door-to-door salesmen. Certain of these salesmen have represented to prospective customers that they were engaged in making a survey for certain prominent soap companies; that these companies desired to obtain from housewives soap box tops which could be turned in to the federal government as proof of the volume of their sales and as proof that their allocations of fats should be increased; that they were authorized to sell the merchandise which they were offering at special prices ($49.90 to $56.90) which were $20.00 to $50.00 below the regular price, on the condition that the buyer collect and send to the corporate petitioner a certain number of soap box tops (R. vol. I, A20). All of these representations were false (*id.*, A21), and they constituted the usual and typical sales approach of the corporation's salesmen (*id.*, A22).

Each order blank used by the salesmen was captioned in large letters "SPECIAL OFFER." The order which the buyer signed required a down payment of $1.90 and monthly payments of the balance. After the corporation made a credit check of the buyer, the merchandise was delivered by its truck and the delivery man secured the buyer's signature to a note for the balance of the purchase price, and gave the buyer a manila envelope addressed to the corporation to be used in sending to it collected box tops. (R. vol. I, A20-A21.)

The individual petitioners were respectively president and secretary-treasurer of the corporate petitioner and owned all of its stock.[2] They directed its activities and formulated and controlled its policies, including its sales and advertising policies. (R. vol. I, A19.)

ARGUMENT

1. Petitioners contend (Pet. 6-11) that those whom they employed to solicit orders from the general public were independent contractors[3] and that they are therefore not legally responsible for the false representations made by their salesmen. But, as the court below noted, the Commission found that the corporation furnished the salesmen with order forms which falsely represented the making of a special offer, permitted the salesmen to request purchasers to collect box tops, and supplied to purchasers self-addressed envelopes for mailing to the corporation collected box tops (R. vol. II, 44). These findings, which are undisputed, fully warrant the finding by the Commission that petitioners "actively encouraged and participated in," and "received the fruits" of the

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[2] Petitioner Blumenfeld resigned as president and disposed of his stock in March 1950, but this occurred eight months after the filing of the Commission's complaint and about a month after the close of the hearings before the trial examiner (R. vol. I, A22; vol. II, 44).

[3] The contract of employment is designated "Agent's Application" (Resp. Ex. 1, R. vol. I, A47).

false representations made by their salesmen, and are "responsible for" these representations (R. vol. I, A22).

Those who facilitate, encourage, knowingly furnish the means for, and derive profit from unfair and deceptive acts and practices by others are themselves engaging in such acts and practices. In *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U.S. 483, a manufacturer used labels which tended to deceive a substantial part of the consuming public, but not the dealers to whom the manufacturer sold. This Court, in holding that such a practice is an unfair method of competition prohibited by the Trade Commission Act, said (p. 494) that it had long been a part of the law of unfair competition that a person is a wrongdoer who "furnishes another with the means of consummating a fraud." Cf. *United States* v. *Dotterweich,* 320 U. S. 277, 281.

2. Petitioners contend (Pet. 11-19) that the individual petitioners did not participate in the unfair acts and practices found by the Commission other than as officers of the corporate petitioner, and that the Commission therefore erred in issuing an order directed against the individual petitioners. The court below, in summarily rejecting this contention, said (R. vol. I, 46):

> They [the individual petitioners] had organized the corporate petitioner approximately two years before this proceeding was com-

menced. They were its officers, they owned all its capital stock and they and their wives constituted its board of directors. It was admitted in the answer to the complaint, as well as in their testimony, that they directed and guided the corporation in matters of policy. Under these circumstances they cannot escape individual responsibility on the "flimsy pretext" that they were acting on behalf of the corporation and not as individuals.

There is direct judicial precedent for the ruling by the court below upholding the order issued against the individual petitioners. *Steelco Stainless Steel, Inc.* v. *Federal Trade Commission,* 187 F. 2d 693, 697 (C.A. 7), held that when the goods of a corporation have been sold by means of various misrepresentations, and when the Federal Trade Commission has found that by virtue of "stock ownership, officership, and active direction, the policies, activities and practices" of the corporation have been those of its president, the Commission is justified in issuing a cease and desist order under Section 5 of the Trade Commission Act directed against the corporation's president in his individual capacity.

Petitioners contend (Pet. 19-20) that it was error to include petitioner Blumenfeld in the order because, prior to issuance of the order, he had resigned as an officer of the corporate petitioner.

But such resignation merely points up the soundness of the action of the Commission in binding this petitioner in his individual capacity. He had engaged in unfair and deceptive practices through the medium of one corporate instrumentality and should not be left free to continue or resume these practices either individually or through some other corporate instrumentality. Cf. *Gelb* v. *Federal Trade Commission,* 144 F. 2d 580, 581 (C.A. 2); *Federal Trade Commission* v. *Standard Education Society,* 302 U.S. 112, 119-120.

3. Petitioners contend (Pet. 24-30) that the Commission's order is, in certain respects, unduly broad and indefinite and should therefore be modified. We think that the court below correctly set forth the facts and applicable law when it said with reference to this contention (R. vol. II, 47-48):

> It will be noted that in large part the language objected to seeks to prevent petitioners from continuing their illegal sales methods in a slightly different manner. So much of the order as seeks to accomplish this end is proper. The Commission's power is not limited to proscribing only the particular scheme used in the past. It may also prohibit variations on the basic theme. * * * Our power to modify an order such as this, once an illegal trade practice has been found, is

> severely circumscribed, but even if it were not we could find nothing improper about the Commission's efforts to prevent this scheme from reappearing in a slightly altered garb.

The Commission, in fashioning the scope of the prohibitions of its order, plainly committed no error calling for judicial correction. "The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive practices which have been disclosed." *Jacob Siegel Co.* v. *Federal Trade Commission,* 327 U.S. 608, 612. The applicable principles are stated in the *Siegel* case as follows (pp. 611-612):

> The Commission has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices in this area of trade and commerce. Here, as in the case of orders of other administrative agencies under comparable statutes, judicial review is limited. It extends no further than to ascertain whether the Commission made an allowable judgment in its choice of the remedy.

CONCLUSION

The decision below is clearly correct, no question of general importance is presented, and there is no conflict of decisions. It is respectfully submitted that the petition for a writ of certiorari should be denied.

WALTER J. CUMMINGS, JR.,
Solicitor General.

NEWELL A. CLAPP,
Acting Assistant Attorney General.

CHARLES H. WESTON,
Special Assistant to the Attorney General.

W. T. KELLEY,
General Counsel,
Federal Trade Commission.

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